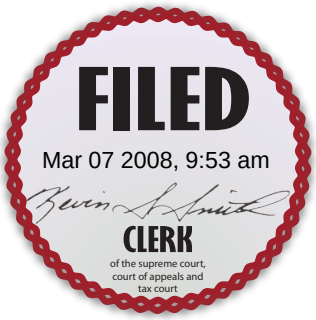

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IN THE
COURT OF APPEALS OF INDIANA

ERIE INSURANCE EXCHANGE, as Subrogee of Charles and Marlene Haskett,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 48A02-0708-CV-694
TOM KING d/b/a KING'S CONSTRUCTION,	)	
Appellee-Defendant.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0606-CT-559

March 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Plaintiff-Appellant Erie Insurance Exchange ("Erie Ins."), as subrogee of Charles and Marlene Haskett ("Hasketts"), appeals the trial court's entry of summary judgment in favor of Defendant-Appellee Tom King d/b/a King's Construction ("King"). We reverse and remand.

Issue

Whether the trial court erred in granting summary judgment in favor of King based on claim preclusion.

Facts and Procedural History

On July 9, 2002, King contracted with the Hasketts to build a home in Elwood, Indiana. The Hasketts had a homeowner's insurance policy with Erie Ins. On August 11, 2003, a bathroom in the Haskett's newly built home was flooded due to the hot water connection separating from the bathroom vanity. Based on the claim filed by the Hasketts on their insurance policy, Erie Ins. paid $5,268.71 for the repairs to the home. On August 12, 2005, Erie Ins. filed a small claims action in Madison County against King to recover the amount paid. Erie Ins. and King eventually reached a settlement for $4,400 and submitted a Joint Stipulation of Dismissal with Prejudice ("Stipulation") to the small claims court on November 3, 2005. Per the Stipulation, the parties represented to the court that they "compromised and resolved all claims in this action." Appellant's Appendix at 50. The following day, the small claims court dismissed the case ("Lawsuit I") with prejudice.

On June 29, 2004, the Hasketts' home flooded again because a water line located beneath a sink in a different bathroom disconnected. The Hasketts then filed another claim

under their insurance policy with Erie Ins. for $16,771.46. To recoup the money it paid out for the second claim, Erie Ins. filed a complaint for damages ("Lawsuit II") against King in Madison Superior Court on June 12, 2006. On January 8, 2007, King filed a Motion for Summary Judgment, contending that Erie was precluded from bringing Lawsuit II based on the dismissal of Lawsuit I because both incidents allegedly arose from King's faulty workmanship in building the Haskett's home. The trial court heard arguments and granted the motion.

Discussion and Decision

On appeal, the standard of review of a summary judgment ruling is the same as that used by the trial court: summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Lean v. Reed, 876 N.E.2d 1104, 1107 (Ind. 2007). All inferences are to be drawn in favor of the non-moving party. Id.

Erie Ins. argues that the trial court erred in granting King's motion for summary judgment based on claim preclusion because Lawsuit I only addressed the merits of the damage resulting from the August 11, 2003 flooding. The doctrine of res judicata prevents the repetitious litigation of disputes that are essentially the same. Afolabi v. Atl. Mortg. & Inv. Corp., 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006). Claim preclusion is one of the two distinct components of the doctrine of res judicata. Dawson v. Estate of Ott, 796 N.E.2d 1190, 1195 (Ind. Ct. App. 2003).

> Claim preclusion is applicable when a final judgment on the merits has been rendered and acts to bar a subsequent action on the same claim between the same parties. When claim preclusion applies, all matters that were or might

> have been litigated are deemed conclusively decided by the judgment in the prior action. Claim preclusion applies when the following four factors are present: (1) the former judgment was rendered by a court of competent jurisdiction; (2) the former judgment was rendered on the merits; (3) the matter now at issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action was between parties to the present suit or their privies.

Id. (citations omitted). In determining whether the doctrine of claim preclusion should apply, it is helpful to inquire whether identical evidence will support the issues involved in both actions. Afolabi, 849 N.E.2d at 1173.

The parties disagree as to whether the third factor is fulfilled under these circumstances. Erie Ins. contends that the damage to the Haskett's house on June 29, 2004 in a different bathroom is a separate and distinct occurrence, giving rise to a separate cause of action. King asserts that the damage from both episodes occurred before the parties' settlement and dismissal of Lawsuit I and that both lawsuits allegedly arise from King's negligence in constructing the Haskett home. Thus, King argues the matter at issue in Lawsuit II, the liability for the June 29, 2004 flooding, could have been litigated in Lawsuit I. However, King does not dispute that there were two separate flooding episodes with resulting damage. Rather, he argues that because Erie Ins. was aware of both episodes it was required to litigate them as one claim. We disagree.

Although it may have been preferable to consolidate both flooding instances into one lawsuit, each flooding occurrence creates a separate cause of action. The evidence potentially supporting each episode is not identical. Each flooding transpired on a different date, in a different bathroom, and caused different damage, including the degree of damage, to the Haskett's home. Furthermore, the proceedings in Lawsuit I only referenced the

flooding on August 11, 2003, and the resulting damage. The matter as to liability from the flooding on June 29, 2004, could not have been determined in Lawsuit I because that separate cause of action and its supporting evidence had not been presented to the trial court. See Rees v. Heyser, 404 N.E.2d 1183, 1186 (Ind. Ct. App. 1980) (holding that creditor's action against debtor on check was not barred on theory of claim preclusion by previous suit by creditor on promissory note where the only issue decided in the previous suit was whether the promissory note was in fact paid by debtor's check to creditor). We therefore conclude that the trial court erred in granting summary judgment to King.

Reversed and remanded.

NAJAM, J., and CRONE, J., concur.